



## **Coast Guard**

### **33 CFR Part 117**

**Docket No. USCG-2020-0603**

**RIN 1625-AA09**

### **Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the Route 7 Bridge, across the Hackensack River, mile 3.1, at Jersey City, NJ. The bridge owner, New Jersey Department of Transportation (NJDOT), submitted a request to allow the bridge to require four hours advance notice for bridge openings. This final rule would create efficiency in drawbridge operations and better serve the needs of the community while continuing to meet the reasonable needs of navigation.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2020-0603 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, First Coast Guard District, Project Officer, telephone 212-514-4336, e-mail [Judy.K.Leung-Yee@uscg.mil](mailto:Judy.K.Leung-Yee@uscg.mil).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
NJDOT	New Jersey Department of Transportation
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

On November 19, 2020, the Coast Guard published a Notice of Proposed Rulemaking entitled Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ in the *Federal Register* (85 FR 73667). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended on January 19, 2021, we received no comments in response to the NPRM.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 499. The new Route 7 Bridge at mile 3.1 over the Hackensack River at Jersey City, New Jersey, is currently under construction and will have a vertical clearance of 70 feet at mean high water in the closed position and 135 feet at mean high water in the open position. Horizontal clearance is approximately 158 feet. The existing Route 7 Bridge over the Hackensack River has a vertical clearance of 35 feet at mean high water in the closed position and 135 feet at mean high water in the open position. Horizontal clearance is approximately 158 feet.

The waterway users include recreational and commercial vessels including tugboat/barge combinations.

The existing regulation, 33 CFR 117.723(k) published under Federal Register 85 FR 8747, effective April 19, 2020, requires the existing bridge open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the

bridge.

In August of 2020, the owner of the bridge, New Jersey Department of Transportation, requested a change to the drawbridge operation regulations to the new bridge. The owner anticipates a lower volume of bridge openings given that the new bridge's vertical clearance in the closed position will be double the clearance of the existing bridge.

Under this rule, the new draw would open on signal when at least four hours advance notice is given by calling the number posted at the bridge. This rule change will allow for more efficient and economic operation of the bridge while meeting the reasonable needs of navigation. The Coast Guard is proposing this rulemaking under authority in 33 U.S.C. 499.

The bridge logs show that the Route 7 Bridge had 16 annual openings in 2018, 10 annual openings in 2019, and 6 annual openings in 2020 (through 6/19/2020).

#### **IV. Discussion of Comments, Changes and the Final Rule**

The Coast Guard provided 60 days for comment regarding this rule and no comments in the docket were received.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The final rule provides that the Route 7 Bridge shall open on signal when at least four hours advance notice is given by calling the number posted at the bridge. It is the Coast Guard's opinion that the rule meets the reasonable needs of marine traffic.

Both existing and new bridges will be operated under the current operating schedule until the existing bridge is demolished/removed at which point this final rule will take effect.

## **V. Regulatory Analyses**

The Coast Guard developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Coast Guard believes this rule is not a significant regulatory action. The bridge will still open for all vessel traffic after a four-hour advance notice is given. We believe that this change to the drawbridge operation regulations at 33 CFR §117.723 will meet the reasonable needs of navigation.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comment from the Small Business Administration on this rule. The Coast Guard certifies under 5

U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The new Route 7 Bridge provides 70 feet of vertical clearance at mean high water that should accommodate most of the present vessel traffic, except for deep draft vessels. The new bridge will open on signal for any vessel when at least four hours advance notice is given by calling the number posted at the bridge. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### *D. Federalism and Indian Tribal Government*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “FOR FURTHER INFORMATION CONTACT” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland  
Security Delegation No. 0170.1.

2. Revise § 117.723(k) to read as follows:

**§ 117.723 Hackensack River.**

\* \* \* \* \*

(k) The draw of the Route 7 Bridge, mile 3.1, at Jersey City, shall open on signal if at least four hours advance notice is given by calling the number posted at the bridge.

Dated: April 27, 2021

T. G. Allan Jr.,  
Rear Admiral, U.S. Coast Guard,  
Commander, First Coast Guard District.  
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